

## §51.41

## 38 CFR Ch. I (7–1–14 Edition)

of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) \$71.42 for each day the veteran is in the facility.

(b) During Fiscal Year 2009 and during each subsequent Fiscal Year, VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) The basic per diem rate for the Fiscal Year established by VA in accordance with 38 U.S.C. 1741(c).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744) [74 FR 19432, Apr. 29, 2009]

### §51.41 Contracts and provider agreements for certain veterans with service-connected disabilities.

(a) *Contract or VA provider agreement required.* VA and State homes may enter into both contracts and provider agreements. VA will pay for each eligible veteran's care through either a contract or a provider agreement (called a "VA provider agreement"). Eligible veterans are those who:

(1) Are in need of nursing home care for a VA adjudicated service-connected disability, or

(2) Have a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and are in need of nursing home care.

(b) *Payments under contracts.* Contracts under this section will be subject to this part to the extent provided for in the contract and will be governed by federal acquisition law and regulation. Contracts for payment under this section will provide for payment either:

(1) At a rate or rates negotiated between VA and the State home; or

(2) On request from a State home that provided nursing home care on August 5, 2012, for which the State home was eligible for payment under 38 U.S.C. 1745(a)(1), at a rate that reflects

the overall methodology of reimbursement for such care that was in effect for the State home on August 5, 2012.

(c) *Payments under VA provider agreements.* (1) State homes must sign an agreement to receive payment from VA for providing care to certain eligible veterans under a VA provider agreement. VA provider agreements under this section will provide for payments at the rate determined by the following formula. For State Homes in a metropolitan statistical area, use the most recently published CMS Resource Utilization Groups (RUG) case-mix levels for the applicable metropolitan statistical area. For State Homes in a rural area, use the most recently published CMS Skilled Nursing Prospective Payment System case-mix levels for the applicable rural area. To compute the daily rate for each State home, multiply the labor component by the State home wage index for each of the applicable case-mix levels; then add to that amount the non-labor component. Divide the sum of the results of these calculations by the number of applicable case-mix levels. Finally, add to this quotient the amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, then multiplied by 12, then divided by the number of days in the year.

NOTE TO PARAGRAPH (c)(1): The amount calculated under this formula reflects the prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for establishing these rates includes CMS information that is published in the FEDERAL REGISTER every year and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

(2) The State home shall not charge any individual, insurer, or entity (other than VA) for the nursing home care paid for by VA under a VA provider agreement. Also, as a condition of receiving payments under paragraph (c) of this section, the State home

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must agree not to accept drugs and medicines from VA provided under 38 U.S.C. 1712(d) on behalf of veterans covered by this section and corresponding VA regulations (payment under paragraph (c) of this section includes payment for drugs and medicines).

(3) Agreements under paragraph (c) of this section will be subject to this part, except to the extent that this part conflicts with this section. For purposes of this section, the term “per diem” in part 51 includes payments under provider agreements.

(4) If a veteran receives a retroactive VA service-connected disability rating and becomes a veteran identified in paragraph (a) of this section, the State home may request payment under the VA provider agreement for nursing home care back to the retroactive effective date of the rating or February 2, 2013, whichever is later. For care provided after the effective date but before February 2, 2013, the State home may request payment at the special per diem rate that was in effect at the time that the care was rendered.

(d) *VA signing official.* VA provider agreements must be signed by the Director of the VA medical center of jurisdiction or designee.

(e) *Forms.* Prior to entering into a VA provider agreement, State homes must submit to the VA medical center of jurisdiction a completed VA Form 10-10EZ, Application for Medical Benefits (or VA Form 10-10EZR, Health Benefits Renewal Form, if a completed VA Form 10-10EZ is already on file at VA), and a completed VA Form 10-10SH, State Home Program Application for Care—Medical Certification, for the veterans for whom the State home will seek payment under the provider agreement. After VA and the State home have entered into a VA provider agreement, forms for payment must be submitted in accordance with paragraph (a) of this section. VA Forms 10-10EZ and 10-10EZR are set forth in full at §58.12 of this chapter and VA Form 10-10SH is set forth in full at §58.13 of this chapter.

(f) *Termination of VA provider agreements.* (1) A State home that wishes to terminate a VA provider agreement with VA must send written notice of its intent to the Director of the VA

medical center of jurisdiction at least 30 days before the effective date of termination of the agreement. The notice shall include the intended date of termination.

(2) VA provider agreements will terminate on the date of a final decision that the home is no longer recognized by VA under §51.30.

(g) *Compliance with Federal laws.* Under provider agreements entered into under this section, State homes are not required to comply with reporting and auditing requirements imposed under the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*); however, State homes must comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

(Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741-1745; 42 U.S.C. 1395cc)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0091 and 2900-0160)

[77 FR 72741, Dec. 6, 2012]

### §51.42 Drugs and medicines for certain veterans.

(a) In addition to per diem payments under §51.40 of this part, the Secretary shall furnish drugs and medicines to a facility recognized as a State home as may be ordered by prescription of a duly licensed physician as specific therapy in the treatment of illness or injury for a veteran receiving care in a State home, if:

(1) The veteran: